

**AMENDED MINUTES
HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY, July 19, 2007**

MEMBERS PRESENT: Tom McGuirk, Chairman
Robert V. Lessard
Jack Lessard
Bill O'Brien
Brian Provencal

OTHERS PRESENT: Kevin Schultz, Building Inspector
Shirley Doheny, Recording Secretary

The meeting began with the Pledge of Allegiance. Chairman McGuirk announced that petition 34-07 requested to be withdrawn. Vic Lessard motioned that the petition be continued to the August meeting, seconded by Bill O'Brien. Vote 5-0, Motion allowed.

Bill O'Brien stated that he received a copy of a letter from Sally Westfall stating that she lives across from the Victoria Inn and was not notified. The records indicated that she had been notified.

24-07 The continued hearing of the petition of the Estate of Raymond & Marie Gordon, through option holder North Beach Investments Inc., for property located at 76 Kings Highway seeking relief from Article 4.5.1 to place a structure at 10' off the front lot line where 20' is required. This property is located at Map 196, Lot 25 and 14 in a RB zone.

Vic Lessard excused himself. There was no alternate. Chairman McGuirk asked if there was any issue with there being only four members. After discussion, counsel stated they were prepared to go forward. Atty. Ells stated that he understood that the public hearing was closed in order to go to Counsel for an opinion. Chairman McGuirk stated that Town Counsel was consulted and the Board was advised that they did not have to come before the Zoning Board for the Special Permit.

Atty. Ells reminded the Board that this was a six unit cabin project. There is now pending litigation on an approved site plan. In an effort to try to satisfy some of the concerns of the abutters, they have tried to reconfigure the plan. They are proposing to use a paper street as an access point and putting the ten parking spaces along the northerly boundary. This required moving three of the cottages closer to King's Highway.

Questions from the Board

Bill O'Brien asked if these would remain two separate lots. Mr. Radkay advised that they would be merging the two lots. Mr. O'Brien asked about the height. Mr. Radkay stated the max would be 22 feet. The cabins are a one story with a loft with no upper deck. They will be built for year round. The loft is about eight feet by six feet. Mr. O'Brien questioned whether the petition was properly noticed because it stated a structure rather than three cabins. Mr. Schultz stated that if it came back substantially different he would ask them to come back before the Board. Mr. McGuirk asked how much space there was between the back three and the building envelope. Mr. Radkay stated approximately ten feet.

Bryan Provencal motioned to approve, including the clarification that it is three structures, to be built within the 20 foot setback each being 16X20 feet in footprint, seconded by Jack Lessard.

Vote: 3-0-1 (Bill O'Brien)

Motion Approved

29-07 The petition of Phillip & Elizabeth Alterman for property located at 4 Sunsurf Avenue seeking relief from Article 4.5.2 to remove and rebuild existing porch which does not meet side setback. This property is located at Map 256, Lot 22 in a RA zone.

Phillip and Elizabeth Alterman came forward. Phillip went through the five criteria as presented in the application.

Questions from the Board

Vic Lessard stated he sees no problem with this.

Comments from the audience

None

Back to the Board

Bill O'Brien motioned to approve, seconded by Bryan Provencal. Mr. McGuirk polled the Board regarding the five criteria.

Vote: 5-0

Motion Approved

30-07 The petition of Alfred & Joyce Charpentier for property located at 15 Diane Lane seeking relief from Articles 4.5.2, 4.5.3 and Article IV Footnote 12 to place a shed which will not meet the side and rear setbacks. This property is located at Map 282, Lot 192 in a RB zone.

Vic Lessard asked if there was a tax map in the packet. There was not one included. Alfred Charpentier came forward. He went through the five criteria as presented in the petition.

Questions from the Board

Mr. O'Brien asked if the shed that is there would be taken down. Mr. Charpentier advised no, that the shed had been put up before getting approval.

Comments from the audience

None

Back to the Board

Vic Lessard asked if he knew that he needed a permit to put up the shed. He stated he did not know it was required for a shed.

Jack Lessard motioned to approve, seconded by Bill O'Brien. Mr. McGuirk polled the board regarding the five criteria.

Vote: 3-0-2 (O'Brien, V. Lessard)

Motion approved

Mr. O'Brien asked if a notice could be placed on Channel 22 to remind people that a permit is needed prior to putting up a shed.

17-07 The rehearing of the petition of June White for property located at 8 River Avenue seeking relief from Articles 1.3, 4.5.1, 4.5.2 and 4.5.3 to add bedrooms to third floor, 3 bedrooms 1 bath, which were removed from first and second levels, currently only a sleeping loft exists on third level. To remain in current footprint of building outside 7 ft. setback. This property is located at Map 296, Lot 70 in a RB zone.

Laurie Lacoste came forward with June White. Ms. White's position is that the condition that was placed was unwarranted and unreasonable because the Board is without authority to make decisions with regard to deed restrictions. Vic Lessard stated that when the lot was purchased from the Town, the buyers should have been aware of the restrictions. Mr. O'Brien referenced Atty Lacoste's letter dated June 7, 2007. He clarified that the statement "although the 7 boundary line restriction contained in Ms. White's title is more restrictive" should be "less restrictive". Atty Lacoste agreed. He also asked the measurement from the northwest corner of the house to the property line. Ms. White advised it was approximately three feet from the drip edge. Atty. Lacoste stated that Ms. White is staying within the footprint. Kevin Schultz stated that when this comes to him for a building permit, he will not be able to give one. Atty. Lacoste stated for the record that as the Building Inspector, she doesn't believe he has the right to make that decision. She also stated for the record that because the zoning ordinance is least restrictive and the Board found that she met the five conditions, putting any kind of restriction on the decision is pointless.

Questions from the Board

None

Comments from the audience

Walter Wyse of 3 River Ave spoke in support of this project.

Back to the Board

Bryan stated that when he originally voted the on this petition, he thought they were voting to approve it. Vic Lessard voted in favor the last time because he thought it would have to go before the Board and the Town's people.

Bill O'Brien motioned to approve with the stipulation that an accurate certified plot plan of the existing structure including all drip edges be provided and an accurate certified plot plan of the proposed plan, seconded by Bryan Provencal. Mr. McGuirk polled the Board regarding the five criteria.

Vote: 4-0-1 (Vic Lessard)

Motion Approved

31-07 The petition of Ivan Stanek for property located at 106 Locke Road seeking relief from Article 4.2 (frontage), Footnote 22 thereto (square requirement) and 4.3 (minimum lot width). 77.24 feet of frontage where 125 is required, lot width of 77.24 feet where 125 feet is required and which does not meet the square requirement of Footnote 22 to the dimensional table though the lot is otherwise conforming at 32,661 +/- sq. ft. where 20,000 sq. ft. are required. This property is located at Map 179, Lot 22 in a RA zone.

Atty. Michael Donahue and Ivan Stanek came forward. This is an oversized lot that does not have enough frontage. He went through the five criteria as presented in the petition.

Questions from the Board

None

Comments from the audience

Cliff Pratt, 98 Locke Road spoke in favor of the project. He spoke with the owner and Mr. Stanek agreed to put some form of crushed rock on the driveway so that it wouldn't be a dirt driveway.

Back to the Board

Vic Lessard stated that he did a great job on the house and would expect he would continue to do the same. Atty. Donahue stated that Mr. Stanek had spoken with his abutters. Mr. McGuirk expressed desire that the barn not be removed. Mr. O'Brien expressed his concern regarding relief to footnote 22.

Vic Lessard motioned to approve, seconded by Jack Lessard. Mr. McGuirk polled the Board regarding the five criteria.

Vote: 4-1 (Bill O'Brien)

Motion Approved

33-07 The petition of Patricia Lynch for property located at 32 Highland Avenue seeking relief from Articles 4.1.1 to raze and rebuild the two existing single dwelling units. This property is located at Map 274, Lot 101 in a BS zone.

Ernest Cote came forward with Patricia Lynch. Mr. Cote presented the Board with a revised plan. The revised plan shows that the rear building is higher than it originally showed. Mr. Cote went through the criteria as presented in the petition.

Questions from the Board

Vic Lessard stated that this would be much safer than what is there. The setbacks would be better than they were. Jack Lessard agreed. Bill O'Brien expressed concern regarding the relief sought. Mr. O'Brien stated that there were stairs coming out on the south side of the front building and on the west side of the rear building and they are not shown on the plot plan and do not meet the setback requirements. He asked how it would affect the parking. Jimmy McIlveen stated that the front and back stairs could be done the same way, i.e., the stairs would be ingressed. Mr. O'Brien stated that the drawings show 28 feet for the first

floor and the plot plan shows 26 feet. After discussion it was determined it should be 26 feet wide.

Comments from the audience

Elaine Scruton of 30 Highland Avenue came forward. She asked to see the plans. Mr. Reniere asked what the setback would be on the side where Mrs. Scruton's house is. It would be five feet. Mr. Schultz advised that the decks would not be connected. The parking will be onsite.

Back to the Board

Jack Lessard motioned to approve with the stipulations that the front stairs will be ingressed into the front building and the rear stairs will be ingressed into the rear building and the structure in the front will be 26X30 and the structure in the back will be 26X22. Also amended building plans will be submitted. Motion seconded by Vic Lessard. Mr. McGuirk polled the Board regarding the five criteria.

Vote: 5-0

Motion Approved

34-07 The petition of Nana Beach Realty Trust for property located at 30-36 River Avenue seeking relief from Articles 1.2, 1.6 (definition of stacked parking), 4.1.1, 4.5.1, 4.5.2, 4.5.3, 8.2.3, 8.2.4, 8.2.5 and 8.2.6 to construct a new two family duplex to replace the two units that were destroyed by fire in February of 2007. This property is located at Map 296, Lot 157 in a RB zone.

Petition continued

35-07 The petition of June Caldbeck for property located at 16 Wall Street seeking relief from Articles 4.5.1 to extend the landing at the front door. This property is located at Map 282, Lot 128 in a RB zone.

June Caldbeck came forward. She went through the five criteria as presented in the petition.

Questions from the Board

None

Comments from the audience

None

Back to the Board

Bill O'Brien asked if the stairs were on town property. Ms. Caldbeck stated she would not be going beyond the stairs.

Vic Lessard motioned to approve with the stipulation that none of it be on Town property, seconded by Bill O'Brien. Mr. McGuirk polled the Board regarding the five criteria.

Vote: 5-0

Motion Granted

36-07 The petition of KMJ Realty Trust, Pamela S. Nyhan, Trustee for property located at 430 High Street seeking relief from Articles 3 Use Regulations "Functions", 6.1, 6.2, 6.3.5, 1.3, 1.6 (definition of parking space – as to "surfaced area" only) to use the premises for "functions", including without limitation, weddings, receptions, showers, retirement/anniversary/ engagement parties with parking for up to 99 guests provided onsite and parking for guests from 100-148 to be provided at a remote, off-site municipal parking area with shuttle service to the site. This property is located at Map 166, Lot 7 in a RB zone.

Atty Steve Ells came forward with John Nyhan. Atty. Ells stated that he became aware of the deficiency in the petition as it relates to the request to allow offsite parking with shuttle service for guests in excess of 99. He did not include a request for variance from Article 6.3.9. He requested the Board's permission to withdraw without prejudice the portion of the petition that requests parking for guests from 100-148 to be provided at a remote, off-site municipal parking area with shuttle service to the site.

Vic Lessard motioned to allow the request, seconded by Jack Lessard Vote: 5-0 Motion allowed.

Atty Ells recapped the background of this petition. The court remanded the matter to this Board with specific instructions to not consider the fact the property was operated in violation of the ordinance and you are directed to consider the evidence submitted as to any adverse impact at to property values. The initial variances that were granted did include some offsite parking at 432 High Street. That property has since been sold. The modified parking plan adds two spaces to what was previously submitted.

Atty Ells went through the five criteria as presented in the petition. In addition, they submitted letters from local brokers indicating that there has been no diminution of value to the surrounding properties. The Board has received many letters in favor of this petition.

Questions from the Board

None

Comments from the audience

F. X. Bruton came forward representing Ken and Lisa Sakurai. They are opposed to the petition. He provided handouts to the Board which summarized his comments and included exhibits that he would be referring to. This property has already been granted relief from the town. The first relief granted was for use of the property as a bed and breakfast. The variance was provided based on the representation that the Bed and Breakfast would be owner occupied. He stated that it is not the case. The second form of relief was use of a carriage house with a dwelling unit within, with the stipulation that the unit not be rented or sold. They understand that it is being rented out. There is now a request for a third non-permitted use on a small piece of land. They understand that this property will be used on a consistent basis for functions. This is a use that was not in existence when both parties bought their properties. They consider this to be an overburdening of the property. Atty. Bruton takes exception to the way the 99 number was calculated. He believes the number should be 69 people. He referenced Exhibit C. The plan does not provide the way that the guests are able to use the bathrooms. They are located at the backside of the building

which is approximately 40 feet away from the Sakurai's house. They would anticipate music being brought in, a line forming for the bathroom and potential for loud or inappropriate conversations. They would anticipate hours of operation that would be troubling.

He expressed concern about the parking plan. Spaces 2, 3, 4 and 5 have boulders and bushes and wouldn't be able to be used. He took exception to the location of spaces 10 through 17 and expressed concern regarding cars stacked up between 1 and 8.

Atty. Bruton believes that the standard to be used when determining hardship should be the uniqueness of the property not the way the property has been allowed to be developed. He believes that allowing this land to be overcrowded does not provide orderly growth in this area as stated in the Preamble of the Zoning Ordinance. The owner already has the ability to use his property in non-permitted ways. The harm to the neighbors is people partying next to their home potentially most weekends. They believe adding functions to this property would substantially change the essential character of the area. They also believe this will diminish the value of the neighbor's property. He asks that the Board look at the five criteria separately.

Philip Piatti of 434 High Street came forward. He recently purchased his property and paid top dollar. He objects to the continuous parties that go on. He has no objection to the Bed and Breakfast.

Ken Sakurai of 426 High Street came forward. He believes that when you change the homogenous nature of a neighborhood you diminish the value of surrounding property. He believes adding functions would negatively impact the value of his property.

Patricia Nyhan came forward. She believes that the Sakurai's have hurt the value of her property by the way they keep their property. Their functions end at 9 p.m. and they have never had any problems.

Back to the Board

Vic Lessard stated that there are a number condos, apartment houses and residences on the street. Jack Lessard stated he had been to the Inn on three occasions and they were all very nice. The Board has received over 30 letters in favor of this petition. Mr. O'Brien mentioned a number of things located on nearby properties that he believes have a detrimental effect on the value. Mr. McGuirk agreed that this property used as a function facility is in agreement with the preamble of the Zoning Ordinance.

Vic Lessard motioned to approve, he does not believe this will decrease the value of neighboring properties, seconded by Jack Lessard. Chairman McGuirk polled the Board (individually) regarding the five criteria. They believe that granting the variance would not be contrary to public interest. The Board agrees that denying the variance would result in unnecessary hardship to the owner. The Board agrees that granting the variance would be consistent with the spirit of the ordinance. The Board agrees that granting the variance would do substantial justice. The majority of the Board agrees that the proposed use will not diminish the value of surrounding values. Jack Lessard stated they also have two letters from local realtors regarding values.

Vote: 4-0-1 (Bryan Provencal)

Motion Granted

37-07 An Appeal by Colsak Investment, LLC of Administrative Decision for property located at 426 Winnacunnet Road re denial of a building permit. This property is located at Map 208, Lot 48 in a RA/RB zone.

Meeting continued to July 26,2007 to hear petition 37-07.

Bill O'Brien motioned to adjourn, seconded by Jack Lessard. Meeting adjourned at 10:40.

Respectfully submitted,

Shirley Doheny,
Reporting Secretary